Procedural History

Petitioners commenced this action on May 20, 2003, by filing their initial Complaint[3] against DuPont. The Complaint purports to state three counts of employment discrimination (race, national origin, and religion) in violation of Title VII. All three counts arise from DuPont's refusal to allow Plaintiffs to display representations of the Confederate battle flag. All Petitioners joined in the national origin and race discrimination counts, and all but Turley joined the religious discrimination claim.

On October 13, 2003, DuPont served Petitioners with DuPont's motion under Rule 11 of the Federal Rules of Civil Procedure and demanded, as required by Rule 11(c)(1)(A), that the Amended Complaint be voluntarily dismissed within 21 days. The following day, October 14, 2003, DuPont filed and served its Motion to Dismiss pursuant to Rule 12(b)(6). Because Lyons and Petitioners refused to take any corrective action within the 21-day window provided by the Rule, DuPont filed its previously served Rule 11 Motion with the District Court on November 7, 2004.

On November 25, 2003, the District Court entered its order granting DuPont's motion to dismiss all counts of the Amended Complaint. Petitioners did not appeal this dismissal and the lack of merit in their Amended Complaint is not before this Court and cannot be challenged by Petitioners. By this same

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[3] Petitioners subsequently filed an Amended Complaint on September 17, 2003, which contained the same three substantive counts as the initial Complaint.

order, the District Court took DuPont's motion for sanctions under advisement and established a schedule for further proceedings on that motion. DuPont subsequently filed a Motion for an award of attorney's fees pursuant to 42 U.S.C. § 2000e-5(k).

The motions for Rule 11 sanctions and attorney's fees were heard on January 30, 2004. As to the Rule 11 motion, the District Court noted that while it "did not believe that the legal issues raised here have any kind of moorings whatsoever," it would not sanction Lyons because he did not act in bad faith. The District Court then stated that DuPont was entitled to recover at least some of its attorney's fees and costs from the Petitioners, whereupon Lyons invited error by specifically telling the District Court: "if you want to impose that burden [of attorney's fees and costs], impose it on me, ... and the SLRC, which has voted to indemnify me." In response to this invitation for error, the District Court asked the parties to submit supplemental briefs, after which it would "decide what amount of attorneys' fees will be paid and how that payment will be apportioned among the plaintiffs and counsel."

DuPont filed a supplemental memorandum that established - Lyons' impassioned plea notwithstanding - that an award of attorney fees pursuant to Section 2000e-5(k) could only be assessed against parties. DuPont also advised the District Court that that the standard under Rule 11(b)(1) and (b)(2) is objective, and subjective bad faith is not relevant.

The District Court entered its Final Order on February 18, 2004, granting DuPont's Rule 11 motion as to race and religious discrimination counts and granting DuPont's motion for fees and expenses. On the Rule 11 motion, the District Court concluded that the national origin discrimination claim filed by Lyons "marginally satisfies Rule 11(b)(3)" and exercised its discretion not to sanction Lyons with regard to that claim. *Chaplin II*, at 771. By filing and advocating the remaining two counts of the Amended Complaint, however, the District Court found that Lyons violated Rule 11. The District Court found the religious discrimination claim "so lacking in reasonable evidentiary support" that it "must impose Rule 11 sanctions for the filing of that claim." *Id.* The District Court reached this conclusion because "nowhere in the Amended Complaint did Plaintiffs allege that they had both requested and been denied a religious accommodation. Even Plaintiffs' belated letter-writing effort failed to support such a claim."[4] *Id.* The District Court also concluded that the race discrimination claim was "neither factually supported nor supportable" because "Plaintiffs' averred class, Confederate Southern American, is multiracial." *Id.*

As to DuPont's request for an award of attorney's fees and costs, the District Court restated the flaws in the claims that merited sanctioning Lyons, and further explained that the entire Amended Complaint was "frivolous, unreasonable, and without foundation"

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[4] The District Court stated this "eleventh hour attempt to show that they made such a request, many weeks after they sought relief from the [EEOC], [was] not only incredible, but, frankly, disingenuous." *Id.* at 774.

because the Plaintiffs "did not suffer an adverse employment action, and it was unreasonable for them to argue that they had experienced such adversity." *Id.* at 774. The District Court also singled out the race discrimination claim as "particularly frivolous" because the Petitioners

> fail[ed] to aver, in any way, shape, or form, that [they] received disparate treatment based on their race. In fact, inasmuch as Plaintiffs' group of Confederate Southern Americans seems to include Caucasians, African-Americans, and Native Americans, Plaintiffs aver *no one particular race* that was affected by DuPont's ban.

Id. (emphasis in original). Based on these findings, the court assessed awards of attorney fees against each of the Petitioners and sanctioned Lyons for his failure to meet his obligations imposed by Rule 11 in the amount of $10,000 payable to DuPont. *Id.* at 779

Lyons and the individual Petitioners appealed these awards on April 7, 2004. Following oral argument, the Fourth Circuit affirmed the District Court in a *per curiam* opinion. The Fourth Circuit affirmed the District Court's opinion in full, with the exception that it held that Lyons should be sanctioned under Rule 11 for his failure to allege any adverse employment action – the very reason Petitioners were ordered to pay DuPont's attorney's fees – and not because Petitioners' "national origin" was multi-racial. From that decision, and without any request for

rehearing for an alleged failure to provide proper notice to Lyons of the record grounds it relied upon to affirm the District Court, Petitioners filed their Petition for Writ of Certiorari with this Court.

ARGUMENT

I. The Rule 11 Sanctions Award Against Lyons is Not Properly Before This Court.

While Lyons was a party to the appeal before the Fourth Circuit, he is not listed as a petitioner. Petitioners' list of all parties to the proceeding does not list him as a party but as someone who is "also interested in the outcome of this decision." Pursuant to Supreme Court Rule 12, "parties who file no document [with the Court] will not qualify for any relief from this Court." S. Ct. Rule 12.6. By rule, as a party to the proceedings below, Lyons is a party to this proceeding, however,

> [a]ll parties other than the petitioner are considered respondents, but any respondent who supports the position of a petitioner shall meet the petitioner's time schedule for filing documents, except that a response supporting the petition shall be filed within twenty days after the case is placed on the docket, and that time will not be extended.

Id. Lyons' response supporting the Petition needed to be filed by July 5, 2005, and was not. *Id.* As a result, Lyons is not entitled to any relief from this Court.

Petitioners have no standing to challenge the sanction award against Lyons. Where an award of Rule 11 sanctions run only against the attorney, the attorney must appeal in his own name. *Mylett v. Jeane*, 879 F.2d 1272, 1275 (5th Cir. 1989); *Reynolds v. East Dyer Development Company*, 882 F.2d 1249, 1254 (7th Cir. 1989). Lyons' failure to comply with the rules of this Court means that he cannot qualify for any relief from this Court and Petitioners themselves are without standing to advance the claims of their counsel. *See generally, Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (discussing requirements for standing). For this reason alone, the Petition regarding the Rule 11 sanctions against Lyons should not be granted.

II. The Sanctions Award Levied Against Lyons was Proper.

1. Lyons had sufficient notice of the grounds that served as the basis for affirming the sanction award.

Lyons' claim that he was denied proper notice to defend himself on the grounds relied upon by the Fourth Circuit to affirm the sanctions award against him requires an unreasonably narrow reading of the facts of this case. The Fourth Circuit ultimately decided that sanctions against Lyons were appropriate as to the improperly filed race discrimination claim because the Amended Complaint fails to allege that Petitioners had suffered any adverse employment action. Petitioners (and Lyons) knew of this deficiency in their pleadings from the outset of this matter; this failure to comply with a basic requirement for filing a

claim under Title VII was articulated by Dupont as the grounds to support its successful Motion to Dismiss. Petitioners' abject failure to state a *prima facie* case against Dupont also served as the basis for Dupont's seeking - and receiving - an award of attorney fees against Petitioners themselves, an award Lyons improperly invited the Court to levy against him personally.

Lyons' argument boils down to simply this: it was improper for the Fourth Circuit to affirm an award of sanctions against him based on a reason that he had briefed, argued and lost with regard to the award of attorney fees against his clients.[5] The right of the Fourth Circuit, or any circuit court, to affirm a lower court decision based on any reason established in the record is above reproach. In 1945 this Court called it a "long settled rule" that "in reviewing the decision of a

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[5] The District Court's award of Rule 11 sanctions and the Fourth Circuit's affirmance of that award merely state that Lyons is to be sanctioned in the amount of $10,000 for his conduct. Neither court divided the amount into a sanction award based on the improper filing of a race discrimination claim and a sanction award based on the improper filing of a religious discrimination claim. Consequently, even if this Court should grant the Writ of Certiorari on this point - and it should not - and even if this Court would eventually determine that the award of sanctions on this claim was in error - and it was not - the effect of this ruling could be nonexistent. The District Court could simply, and well within its discretion, determine that Lyons' actions deserved to be sanctioned in the amount of $10,000 solely based on his decision to file a factually meritless claim for religious discrimination after arranging for a belated request for accommodation. The application of this decision could be inconsequential in this matter and of no long-standing effect baring a repetition of the same convoluted fact pattern.

lower court, it must be affirmed if the result is correct 'although the lower court relied upon a wrong ground or gave a wrong reason.'" *Securities and Exchange Commission v. Chenery Corp.*, 318 U.S. 80, 88 (1943) (citing *Helvering v. Gowran*, 302 U.S. 238, 245 (1937); *see also Bennett v. Spear*, 520 U.S. 154, 166 (1997) ("A respondent is entitled, however, to defend the judgment on any ground supported by the record."). Petitioners cite no exception to this general rule merely because the matter at issue is an award of sanctions under Rule 11, and there is none. In this case, the result from the District Court was correct - Lyons' conduct deserved sanction - and the Fourth Circuit was correct to affirm.

While the parenthetical explanations provided by Petitioners in connection with their case citations reveal that they realize the cases are of minimal relevance, the parentheticals actually overstate the relevance of each case. In truth, they are completely inapposite to any issue at hand. The Tenth Circuit in *Hutchison v. Pfeil*, 208 F.3d 1180 (10th Cir. 2000), held that the award of Rule 11 sanctions cannot be affirmed based on a statutory provision permitting an award of attorney fees where the district court expressly denied a motion for attorney fees under that statute. *Id.* at 1186. The court in *Burda v. M. Ecker Company*, 954 F.2d 434 (7th Cir. 1992), noted that it could not consider the propriety of imposing sanctions on a party under a statutory provision where "the district court specifically relied on Rule 11 to impose sanctions" and did not address the statutory provision. *Id.* at 441. Finally, the court in *Conkle v. Potter*, 352 F.3d 1333 (10th Cir. 2003) determined that it could not affirm the

dismissal of a complaint as a proper sanction under Federal Rule of Civil Procedure 41(b) where "the district court's dismissal order was not based on a sanction analysis, [and] the court did not evaluate the required sanction factors on the record." *Id.* at 1337. In this case, however, the District Court properly granted Dupont's motion for attorney fees pursuant to Section 2000e-5(k) based on the record before it because Petitioners' filing was frivolous and without merit.

The Fourth Circuit's decision to affirm the District Court's award of Rule 11 sanctions against Lyons based on his filing of the race discrimination claim was appropriate, even though the grounds advanced by the Fourth Circuit in support of the sanction were slightly different that those cited by the District Court. Lyons had sufficient notice to prepare and defend the claim and his rights have not been violated.

2. The award of sanctions against Lyons for filing and advocating the race discrimination claim was legally justified.

For reasons that will be discussed in greater detail later in this Response, there is simply no legitimate argument that Petitioners suffered any adverse employment action that would be cognizable under Title VII. Petitioners were merely asked to not place stickers and decals on their lunch boxes and to refrain from wearing certain t-shirts and belt buckles. None of the Petitioners were disciplined and none suffered the slightest diminution in pay, rank, or benefits. Petitioners' claim that they suffered an

adverse employment action is thoroughly without merit and properly supports an award of sanctions against Lyons for his filing and advocating the race and religious discrimination claims.

Furthermore, the reason given by the District Court for sanctioning Lyons was legally correct. Petitioners allege that they were discriminated against as "Confederate Southern Americans" because of their race. As Petitioners inconsistently - and nonsensically - argue, the group "Confederate Southern Americans" is multiracial; Petitioners offered affidavits by African Americans and one member of the Cherokee Nation in support of this contention. Petitioners also alleged that the Dupont policy affected all "Confederate Southern Americans;" Petitioners never argued that it applied to only one race. Merely because Petitioners were all white is not sufficient, because "never once did they [Petitioners] suggest that Dupont's policy discriminates, directly or indirectly against Caucasians." *Chaplin II*, at 771. The District Court Petitioners

> failed to aver, in any way, shape, or form, that Plaintiffs received disparate treatment based upon their race. In fact, in as much as Plaintiffs' group of Confederate Southern Americans seems to include Caucasians, African Americans, and a Native American, Plaintiffs aver no *one, particular* race that was affected by Dupont's ban.

Id. at 774 (emphasis in original). Simply put, Petitioners never alleged that Dupont's ban on displays of the Confederate battle flag in the workplace was enforced unequally because of race: the ban affected all employees in the same manner including nonwhite "Confederate Southern Americans." Petitioners' Amended Complaint, on its face, was "particularly frivolous" and sanctions against Lyons for filing and advocating it were proper.

3. "Lyons had absolutely no factual foundation upon which to base a claim of religious discrimination."

Lyons' argument here is simply a "third bite at the apple." He does not advance a novel theory or allege that the Fourth Circuit made an error of law; he simply claims the prior courts failed to understand the facts and repeats his tired, twice-rejected argument. Such a claim, especially where the original decision was charged to the sound discretion of the trial court, *see Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990), does not belong before this Court. *See* S. Ct. Rule 10.

The District Court found, and the Fourth Circuit affirmed, that Lyons could neither plead nor prove that the Petitioners "had both requested and been denied a religious accommodation." Lyons problem is not merely that he failed to plead sufficient facts to defeat a motion to dismiss. Instead, the record as a whole, including the Amended Complaint, establishes that Lyons either did not conduct a reasonable pre-filing inquiry or ignored the results of his inquiry. In either

event, Lyons' conduct is deserving of sanction under Rule 11 and the District Court did not abuse its discretion in awarding sanctions.

As noted, Lyons and the Petitioners did not appeal the District Court's decision to dismiss this count. Lyons also does not contest the underlying law, specifically that Petitioners must prove they informed DuPont of both their religious needs and their need for accommodation. Petition for Writ of Certiorari at 11; *see also Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012, 1019 (4th Cir. 1996). Lyons, consequently, should not now challenge the finding that they failed to request an accommodation because that is the law of the case. *See Messinger v. Anderson*, 225 U.S. 436, 444 (1921) (stating courts should refuse to reopen what has been finally decided).

Petitioners' failure to allege a request for accommodation was properly decided. Lyons cannot identify any actual request for accommodation of "sincere religious beliefs" prior to his clients' charges of discrimination with the EEOC. He merely claims that because DuPont knew that the Petitioners were claiming to be the victims of religious discrimination, DuPont should have known that Petitioners were seeking an accommodation. Claims for discriminatory treatment and for failure to accommodate, however, are separate and distinct, "[t]herefore, they are not like or reasonably related to one another, and one cannot expect a failure to accommodate claim to develop from an investigation into a claim [of disparate treatment]." *Green v. National Steel Corp., Midwest Div.*, 197 F.3d 894, 898 (7th Cir. 1999) (considering the Americans with

Disabilities Act); *see also Marshall v. Federal Express Corp.*, 130 F.3d 1095, 1098 (D.C. Cir. 1997) (holding failure to accommodate claim barred where plaintiff filed an EEOC charge alleging failure to promote based on a disability but did not mention a failure to accommodate). Mere knowledge of a discrimination claim is not sufficient to give notice of a need for accommodation.[6]

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[6] The Fourth Circuit in *Tulon* did say that knowledge of an employee's sincere religious belief could put the employer on notice of some religious conduct at work, such as ashes on Ash Wednesday or wearing a yarmulke. *Tulon*, 101 F.3d 1020 n3. There is nothing associated with Petitioners' "sincere Christian beliefs" that would put DuPont on notice that Petitioners had a religious need to place decals of the Confederate battle flag on their lunch box. While the Confederate battle flag may have a cross – or more accurately an "x" – upon it, it was not placed there as a religious symbol but as part of a sectarian battle flag. Nor is it reasonable to believe that the Confederate government intended it to have religiosity attached to it. The CSA's constitution contained the very same separation of church and state provision that is found in the first amendment to the United States Constitution. Constitution of the Confederate States of America, Art. I, § 9, ¶ 12. Finally, the evidence before the District Court demonstrated that this "venerated symbol" of their Christian faith was displayed by their supporters protesting outside DuPont's gate with superimposed skull and crossbones and the words "the South shall rise again." Lyons' own SLRC attempts to raise funds by selling stickers of this "religious icon" the form of a hand with thumb uplifted and the rather secular slogan "Thumbs up for Dixie." Given this present activity and the historical connection between this flag and the forces of hatred in this country for over 100 years, these Petitioners owed DuPont some explanation of the religious significance of this flag and how their "religion" required a battle flag to be shown on belt buckles, car bumpers and lunch pails was required since one could not be divined from the conduct of Petitioners or their supporters.

Petitioners simply never sought any accommodation. All of the Petitioners' various complaints about the ban of the Confederate battle flag on DuPont property were meticulously documented by DuPont, yet no request for accommodation of Plaintiffs' peculiar religious beliefs appears in those documents. Petitioners' charges of discrimination filed with the EEOC say only that "banning Confederate symbols while not banning other religious symbols worn by other employees is discrimination based on religion by DuPont." The charges contain no allegation of a failure to accommodate. None of these employees ever explained to DuPont or the EEOC exactly how their religious faith required displaying the Confederate battle flag or how these religious rituals could or should be accommodated.

The first and only time any Petitioner asked DuPont to accommodate his religious beliefs occurred when five of the Petitioners tendered, in unison, nearly identical notes that asked DuPont "to accommodate me." And that is all they say; they do nothing more than contain the "magic word" "accommodate." They do not explain (a) what is to be accommodated, (b) why they need an accommodation, and (c) just how this need could be accommodated. DuPont is still left to guess how Petitioners' religion requires displaying a battle flag on a belt buckle or lunch pail and how DuPont could "accommodate" that practice short of ignoring its policy.

In truth, these notes were nothing more than the fruit of a blatantly orchestrated effort by counsel and client to create evidence 83 days after the charges of

discrimination were denied and less than one week before Plaintiffs' right to sue letters expired. The only explanation for such conduct is that someone realized that the religious discrimination claim was fatally flawed, and set out to "fix" this problem. It is no wonder the District Court concluded that this "eleventh hour attempt to show that they made such a request, many weeks after they sought relief from the [EEOC], [was] not only incredible, but, frankly, disingenuous." *Chaplin II*, at 774. Even taking these "follow-ups" in their best possible light for Lyons, they establish that he knew his claim could not succeed.

This last-second letter writing campaign was also ineffective and any pre-filing investigation by Lyons would have revealed this. Petitioners' "right to sue" DuPont was constricted by the four corners of their charges of discrimination filed with the EEOC on September 11, 2002. As a general rule, a Title VII plaintiff cannot bring a claim in a lawsuit that was not included in the EEOC charge. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 37 (1974). Having failed to state a religious accommodation claim in the EEOC charge, Petitioners cannot add this theory in their subsequent lawsuit. Any reasonable pre-filing review would have disclosed this principle. The attempt to take remedial steps, however, suggests it was known.

Lyons' pre-filing review did not satisfy him that his clients' claims were meritorious. To the contrary, that review disclosed to Lyons that these religious discrimination claims were flawed, and he took specific, dubious, and ineffective steps to create evidence in an attempt to overcome the problem.

Under the circumstances, Lyons is rather fortunate that the District Court concluded only that Lyons "had absolutely no factual foundation upon which to base a claim of religious discrimination." The District Court's leniency on this point hardly amounts to an abuse of its discretion.

III. The Award of Attorney's Fees and Costs Against the Petitioners Was Not an Abuse of Discretion.

Again, Petitioners do not assert that the Fourth Circuit applied the wrong law, or created a "split" in the Circuits. They merely argue that the Fourth Circuit misapplied the law to the facts of this case and ask for a third hearing on the issue.

Pursuant to 42 U.S.C. § 2000e-5(k), attorney's fees should be awarded to a prevailing defendant in a Title VII case upon a finding that the Plaintiff's action was "frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978). The District Court's dismissal of the action prior to discovery, upon a 12(b)(6) motion to dismiss, speaks strongly of the case's frivolity. *See, e.g., Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) (holding a motion to dismiss is appropriate only "when it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief").

1. The entire Amended Complaint was "frivolous, unreasonable and without foundation," because Petitioners did not suffer an "adverse employment action."

The inability of a plaintiff to state a *prima facie* case evinces the frivolous quality of a claim, *see, e.g., Barnes Foundation v. Township of Lower Merion*, 242 F.3d 151, 158 (3d Cir. 2001); *Myers v. City of West Monroe*, 211 F.3d 289, 292 (5th Cir. 2000); *Walker v. NationsBank of Florida, N.A.*, 53 F.3d 1548, 1559 (11th Cir. 1995), and the District Court rested its finding that the Amended Complaint was frivolous, unreasonable and without foundation on this basis. The District Court explained that because Petitioners did not allege that they had been terminated, or demoted, or lost any compensation or benefits, but merely theorized that they could have, their

> injury is speculative and, as such, is insufficient to confer standing upon them under Title VII. Moreover, although Plaintiffs are clearly annoyed and offended by DuPont's ban, "Congress did not intend Title VII to provide redress for trivial discomforts endemic to employment."

Chapin I, at 627 (citations omitted). Despite Petitioners' cries to the contrary, there is nothing confusing about this ruling: Petitioners did not allege the facts necessary to assert a *prima facie* case because they did not allege any adverse employment action. The District Court properly analyzed the law, and,

indeed, Petitioners did not appeal this ruling on the merits of their claims. Petitioners have waived any claim that they did, in fact, allege an adverse employment action because such a claim should have been addressed in an appeal of the dismissal on the merits. *See Messinger*, 225 U.S. at 444; *Hormel v. Helvering*, 312 U.S. 552, 556 (1941) (holding arguments not properly raised are waived).

As recognized by the District Court and the Fourth Circuit, the mere possibility of something occurring in the future does not equate to an actionable injury. *See generally Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (stating that to satisfy Article III's standing requirements, a plaintiff must show that he has suffered an injury that is "not conjectural or hypothetical"). While Petitioners claim that something less than termination can support a Title VII suit, they do not advance - not to the District Court, the Fourth Circuit, or here - any case which finds any similar action by an employer to be sufficient. Instead, the "typical requirements for a showing of an 'adverse employment action'" include "discharge, demotion, decrease in pay or benefits, loss of job title or supervisory responsibility, or reduced opportunities for promotion." *Boone v. Goldin*, 178 F.3d 253, 255 (4th Cir. 1999). For example, while a new job assignment may have been "unfamiliar and more stressful," it did not "have a significant detrimental effect" sufficient to meet Title VII's threshold. *Id.*; *see also Von Gunten v. Maryland*, 243 F.3d 858, 869 (4th Cir. 2001) (finding no adverse employment actions where defendant's conduct, although undoubtedly "irritat[ing]" to the

plaintiff, did not "adversely affect a term, condition, or benefit of employment"); *Munday v. Waste Management of North America, Inc.*, 126 F.3d 239, 243 (4th Cir. 1997) (finding no adverse employment action where manager yelled at employee and instructed other employees to ignore her and spy on her). At the very most, the inability to place a sticker on one's lunch pail, or to wear a particular t-shirt or belt buckle, is an "irritat[ion]," *Von Gunten*, 243 F.3d at 869, or a "trivial discomfort." *Boone*, 178 F.3d at 255.

Lyons and Petitioners had even more reason than this to know that their pleadings were insufficient. In 2001, the United States District Court for the Eastern District of Virginia considered and rejected a nearly identical claim in *Terrill v. Chao*, No. 00-1488-A (E.D. Va.). The plaintiff in *Terrill* argued that his employer discriminated against him as a "Confederate-American" by refusing to allow him to set up a cultural exhibition booth on the employer's "Diversity Day." In granting summary judgment for the employer, Judge Hylton, the chief judge of the very same federal district in which the instant case was filed, concluded:

> There is no adverse employment action alleged here. This plaintiff's job was not affected in any way by these allegations. He simply did not participate in the certain event. But there was no adverse action to his employment as would be required under Title VII.

The Fourth Circuit affirmed this ruling in an unreported opinion. *Terrill v. Chao*, 31 Fed. Appx. 99,

2002 WL 376681 (4th Cir.) (per curiam) (unpublished), *cert. denied*, 537 U.S. 823 (2002) While this unreported decision may have escaped the attention of the public at large, it was known to Lyons and Petitioners because Mr. Terrill's counsel was none other than Lyons and the SLRC.

A reasonable attorney, who had "examine[d] the suit against the background of the law at the time of the filing," *Lotz Realty Co. v. United States Dep't of Housing and Urban Dev.*, 717 F.2d 929, 932 (4th Cir. 1983), would not have filed it. Petitioners deliberately disregarded rulings of the courts in which they were proceeding - all of which were "published" directly to their counsel. Such actions are patently unreasonable and this Court should not issue a Writ of Certiorari.

2. The religion discrimination claim and the racial discrimination claim in the Amended Complaint were "frivolous, unreasonable and without foundation.

As already explained above, the religious discrimination claim and the racial discrimination claim were sufficiently deficient to bring Rule 11 sanctions down upon Lyons. For the very same reason this analysis supports the District Court's award of Rule 11 sanctions, *see Chaplin II*, at 774, the imposition of fees and costs upon these Petitioners for pursuing these frivolous claims is likewise not an abuse of discretion. *See, e.g., Arnold v. Burger King Corp.*, 719 F.2d 63, 67 (4th Cir. 1983) (affirming trial court's award of attorney's fees where "the record . . . is devoid of

any credible evidence to support [Plaintiff's] claim that he was discharged for racial reasons").

CONCLUSION

Neither Petitioners nor Lyons have advanced any arguments worthy of this Court's consideration, they merely repeat the arguments made, and lost, below, and ask this Court to reverse the application of law to fact made by the District Court and Fourth Circuit without access to the entire record. This Court should refuse the Petition for Writ of Certiorari.

Respectfully submitted,

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